

# United States Circuit Court of Appeals

## FOR THE NINTH CIRCUIT

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In the Matter of S. C. OSBORN,  
doing business as S. C. OSBORN &  
COMPANY,

*Bankrupt,*

PURCELL SAFE COMPANY, a cor-  
poration,

*Petitioner and Appellant.*

vs.

NELSON W. PARKER, as Trustee of  
the Estate of S. C. Osborn, doing  
Business as S. C. OSBORN & COM-  
PANY, Bankrupt,

*Appellee.*

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## TRANSCRIPT OF RECORD

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Upon Appeal from the United States District Court  
for the Western District of Washington,  
Northern Division.



No.

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*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

In the Matter of S. C. OSBORN,  
doing business as S. C. OSBORN &  
COMPANY,

*Bankrupt.*

PURCELL SAFE COMPANY, a cor-  
poration,

*Petitioner and Appellant.*

vs.

NELSON W. PARKER, as Trustee of  
the Estate of S. C. Osborn, doing  
Business as S. C. OSBORN & COM-  
PANY, Bankrupt,

*Appellee.*

No. 4474.

NAMES AND ADDRESSES OF COUNSEL.

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*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

<p>In the Matter of S. C. OSBORN, doing business as S. C. OSBORN &amp; COMPANY,  <i>Bankrupt.</i></p>	}	<p>No. 4474. In Bankruptcy.</p>
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PETITION.

*To the Honorable John P. Hoyt, Referee in Bankruptcy:*

Comes now the Purcell Safe Company, a corporation, and respectfully states:

I.

That during all of the times hereinafter mentioned it has been and now is a corporation duly organized and existing under and by virtue of the laws of the State of Washington, and has paid its annual license fee last due to the State of Washington, and during all of said times has been and now is the owner of a certain group of one thousand and twenty (1020) safe deposit boxes built for said S. C. Osborn, doing business as S. C. Osborn & Company, and installed at No. 507 Third Avenue, in the City of Seattle, Washington, and hereinafter referred to; that during all the times herein mentioned said S. C. Osborn was doing business as S. C. Osborn & Company, at the City of Seattle, in the County of King in the State of Washington, of which said county and state he was, during all of said times, a resident; that heretofore on the 28th day of December, 1910, by a decree entered herein Nelson W. Parker was duly appointed trustee of the bankrupt estate of said S. C. Osborn, and duly qualified as such, and at all times since has been and now is such duly qualified and acting trustee of such bankrupt estate of said S. C. Osborn.



## II.

That on the 16th day of February, 1910, the said Purcell Safe Company entered into a certain conditional sale contract, in writing, with the said S. C. Osborn, doing business as S. C. Osborn & Company, under and by the terms of which the said Purcell Safe Company agreed to sell and deliver to the said S. C. Osborn, at the City of Seattle, Washington, said personal property hereinbefore in Paragraph 1 described, for the agreed sum and price of Five Thousand One Hundred Seventy-Four (\$5,174.00) Dollars, of which sum Two Thousand (\$2000) Dollars was, on said date, paid in cash, and the balance was to be paid in twelve months from said date, with interest at seven per cent. (7%) per annum and was evidenced by the promissory note of said S. C. Osborn, doing business as S. C. Osborn & Company, made and delivered simultaneously with the making of said conditional sale contract, a copy of which note is hereto attached marked Exhibit "A," hereby referred to and made a part of this petition; and that in and by said written contract it was agreed, among other things, that said Purcell Safe Company did not part with or relinquish its claim on or title to said personal property until the said note should be fully paid, and that in default of payment of said note, said Purcell Safe Company, without process of law, might take possession of and remove said personal property; that pursuant to said contract said Purcell Safe Company delivered said personal property hereinbefore in Paragraph 1 hereof particularly described to said S. C. Osborn, doing business as S. C. Osborn & Company, on the 16th day of February, 1910, and that at all times after the making of said contract and the delivery of said personal property to said S. C. Osborn, the same has been and is now situated in said store-room No. 507 Third Avenue, in the City of Seattle, Washington, and from the time of such delivery thereof until the appointment of said Trustee herein, was in the possession of the said S. C. Osborn, and at all times since the appointment of said trustee has been and now is in the possession of said trustee, who

took possession thereof from and under said S. C. Osborn, doing business as S. C. Osborn & Company, and not by virtue of any other claim or right; that said written contract, containing a memorandum of such sale and stating its terms and conditions and signed by the vendor and vendee, was duly filed in the office of the auditor of said King County on the 21st day of February, 1910.

### III.

That by the terms of said contract there became due and payable to said Purcell Safe Company from the said S. C. Osborn, doing business as S. C. Osborn & Company, on the 16th day of February, 1911, the sum of Three Thousand One Hundred Seventy-four (\$3,174.00) Dollars, together with interest thereon from the 16th day of February, 1910, at the rate of seven per cent. (7%) per annum, but the said sum and interest have not been paid, nor any part thereof, except the interest thereon to August 16, 1910, and by reason of the default in said payment, said Purcell Safe Company became and is entitled to the immediate possession of said personal property.

### IV.

That on or about the ..... day of ....., 19...., said Purcell Safe Company deposited with and delivered said note evidencing said deferred payment secured by said conditional sale contract to the Seattle National Bank, a national banking corporation having its principal place of business at the City of Seattle, Washington, as collateral security for an indebtedness of said Purcell Safe Company to said bank. The said promissory note and conditional sale contract are the same note and contract mentioned in the certain amended answer of said Seattle National Bank filed herein; that said Purcell Safe Company has fully discharged its obligation to said Seattle National Bank, for which said promissory note and conditional sale contract were so deposited and delivered as col-

lateral security and is now the owner and holder of said promissory note and conditional sale contract.

## V.

That said Purcell Safe Company has demanded of said S. C. Osborn, doing business as S. C. Osborn & Company, and said trustee the possession of said personal property, but they have refused and still refuse to deliver the same to said Purcell Safe Company without the authority and direction of this Court, and wrongfully retain possession thereof from the said Purcell Safe Company; that said personal property has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or attachment against the property of your petitioner; that said personal property, so held by said trustee in his possession as aforesaid, is of the actual value of the sum of Three Thousand Two Hundred Eighty-five and 9/100 (\$3,285.09) Dollars.

WHEREFORE, your Petitioner prays that upon the hearing of this petition the Court order and direct said trustee herein to forthwith deliver possession of said personal property to said Purcell Safe Company.

HUGHES, McMICKEN, DOVELL & RAMSEY,  
Attorneys for said petitioner.

United States of America,  
Western District of Washington.—ss.

P. F. PURCELL, being first duly sworn, on oath deposes and says:

That he is the President of the Purcell Safe Company, the petitioner herein named; that he has read the foregoing petition, knows the contents thereof, and believes the same to be true.

P. F. PURCELL.

Subscribed and sworn to before me this 6th day of May, A. D. 1911.

(Seal)

H. J. RAMSEY,  
Notary Public in and for the State of Washington, residing  
at Seattle.

## EXHIBIT "A."

§3174.

February 16, 1910.

One year after date, without grace, for value received, I promise to pay to the order of PURCELL SAFE CO. at Seattle, Wn., Thirty One Hundred and Seventy Four Dollars in Gold Coin of the United States of America, of the present standard value, with interest thereon, in like Gold Coin, at the rate of 7 per cent. per annum from Feb. 16, 1910, until paid. Interest to be paid semi annually and if not so paid, the whole sum of both principal and interest to become immediately due and collectible, at the option of the holder of this Note. And in case suit or action is instituted to collect this note, or any portion thereof, I promise and agree to pay in addition to the costs and disbursements provided by statute Fifty Dollars in like Gold Coin for Attorney's Fees in said suit or action.

S. C. OSBORN CO.

S. C. OSBORN.

This Note is given in accordance with contract for Safe Deposit Boxes under date of Feb. 16, 1910.

No. Due Feb. 16, 1911.

Endorsed: Petition, Filed May 6th, 1911, 11 a. m. John P. Hoyt, Referee. Filed in the U. S. District Court, Western Dist. of Washington, Aug. 14, 1911. F. A. Simpkins, Acting Clerk.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

<p>In the Matter of S. C. OSBORN, doing business as S. C. OSBORN &amp; COMPANY,  <i>Bankrupt.</i></p>	}	<p>No. 4474. In Bankruptcy.</p>
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ANSWER OF TRUSTEE TO THE PETITION OF THE  
PURCELL SAFE COMPANY.

Comes now Nelson W. Parker, the Trustee herein, and for answer to the Petition by the Purcell Safe Company in the matter of the safe deposit boxes mentioned in said Petition and the Conditional Sale Contract claimed therein, does hereby put the said petitioner on proof as to all matters and things in said Petition set forth, and does in particular deny that the said petitioner has or had any Conditional Sale Contract whereby the title to the property mentioned in said Petition was or is reversed in the petitioner.

Dated at Seattle, in said District, this 3rd day of July, 1911.

McCLURE & McCLURE,  
Attorneys for Trustee.

Endorsed: Answer of Trustee to Petition of Purcell Safe Company. Filed July 3rd, 1911, 2 p. m. John P. Hoyt, Referee. Filed in the U. S. District Court, Western Dist. of Washington, Aug. 14, 1911. F. A. Simpkins, Acting Clerk.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

In the Matter of S. C. OSBORN,            }  
  } No. 4474.  
  } *Bankrupt.*

BE IT REMEMBERED, That on this 3d day of July, 1911, at the hour of 2:00 o'clock P. M., this cause came on for hearing before Hon. John P. Hoyt, Referee in Bankruptcy, at the Court Room in the Federal Building, Seattle, King County, Washington, upon the petition of the Purcell Safe Company for the return of goods, the Trustee in Bankruptcy appearing by McClure & McClure, his attorneys, and said Purcell Safe Company, appearing by Hughes, McMicken, Dovell & Ramsey, its attorneys, whereupon the following proceedings were had:

James Lynch, a witness produced on behalf of the Claimant, being first duly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION BY MR. RAMSEY.

Q Please state your name, age and residence, Mr. Lynch?

A James Lynch. Forty years. Seattle, King County, Washington.

Q Are you connected with the Purcell Safe Company which has filed a petition in this proceeding?

A I am.

Q How long have you been connected with that company and in what capacity?

A Five years and a half as sales manager.

Q The Purcell Safe Company has been a corporation during all of that time and is now a corporation?

A Yes.

Q Have its license fees to the State of Washington been paid?

A Yes.

Q What business has the Purcell Safe Company been engaged in during this period of time?

A The selling and installing of safes, vaults and fixtures; vault fixtures, construction of bank vaults.

Q I call your attention, Mr. Lynch, to a copy of a conditional sale contract dated February 16, 1910, purporting to have been made between S. C. Osborn and the Purcell Safe Company, such copy being certified by the Auditor of King County, Washington, and will ask you whether or not, on behalf of the Purcell Safe Company, you conducted the negotiations with S. C. Osborn respecting the sale, or respecting the subject of this contract concerning the 1020 safe deposit boxes described in the contract? Whether you conducted the negotiations?

A Yes, I conducted the sale.

Q Please state what the negotiations were, or dealings, leading up to the making of this contract between yourself in behalf of the Purcell Safe Company and Mr. Osborn?

A Previous to the making of this contract there had been a general contract between Mr. Osborn and our Company, conducted by myself, for the construction of a vault and equipping it with a fire-proof vault door and 1020 safe deposit boxes; the work for the construction of the vault and installation of the door had been completed some time before the boxes arrived; during the interim—

Q You mean the boxes described in this contract?

A Yes, the boxes described in this contract. During the interim between the completion of the vault and the arrival from our factory of these boxes, we decided that it would become necessary to have Mr. Osborn give us security in the shape of a conditional sale contract when the boxes did arrive, as he began to talk about paying for them on terms other than has been agreed on between us at first. When the boxes arrived in the city I took our form of contract to Mr. Osborn and asked him to sign it; he objected at first, and then, when

he found he could not get the boxes unless he did sign this contract, he signed it and asked that it be not recorded. I told him it was worthless unless it was recorded and we—

Q Well, I don't care for that. State whether or not this independent work and the furnishing of these 1020 boxes were all one contract, or were independent contracts?

A They were independent contracts, but the agreement to supply them was all one in the beginning; that is, his purchasing of the equipment was all one in the beginning.

Q What I mean is, was the price for them independent of each other?

A Entirely. Entirely.

Q Mr. Lynch, were you acquainted with this property described in the paper I have exhibited to you, 1020 safe deposit boxes?

A I was.

Q To whom did that property belong on the date of this agreement, February 16, 1910?

A To the Purcell Safe Company.

Q Now tell me whether on February 16, 1910, you arrived at any agreement with Mr. Osborn respecting these 1020 safe deposit boxes, and what you did with respect to evidencing that agreement in writing?

A We filled out this contract and had him to sign it, and we delivered him a copy—

Q Just a moment. First, what was the character of the paper in which you filled out the contract?

A It was our regular conditional sale contract form.

Q A regular printed conditional sale contract form?

A A regular printed conditional sale contract form.

Q Containing blanks to be filled out?

A Containing blanks to be filled out as to the article and terms of payment and amount.

Q What did you do then?

A We filled out the amounts and terms.

Q Who filled that out?



A I did personally, as shown by this contract here, this copy.

Q You filled out the amount and terms?

A The amount and terms.

Q Did you fill all the blanks?

A I filled all the blanks to complete the contract.

Q From examining this certified copy can you tell whether that is a copy of the contract with reference to which you are testifying now?

A This is.

Q Then what did you do?

A Delivered Mr. Osborn a copy and took the copy that he had signed.

Q Did you state whether this contract was signed by Mr. Osborn and whether it was signed by the Purcell Safe Company, and if not, state what the facts are in respect to that fact, before you delivered it?

A It was signed by Mr. Osborn and bore the signature of the Purcell Safe Company as it is shown on the contract.

Q What was the character of the signature on this contract for the Purcell Safe Company?

A It was the printed signature of the company.

Q I will ask you whether or not at that time you treated or adopted that signature there as the signature of the Purcell Safe Company?

THE COURT: I don't think that is a fair question. Let him state anything he did or anything he thought.

MR. RAMSEY: I didn't intend to ask an unfair question, your Honor.

THE COURT: That is a purely legal conclusion as to what he adopted. You may have him testify to anything he did.

Q Well, was there anything else you did with respect to this matter?

A Well, at the time of the transaction we delivered the boxes but we did not deliver them until Mr. Osborn had signed

the contract and we accepted part payment on the contract at the time.

Q Now I will ask you, Mr. Lynch, whether or not the Purcell Safe Company had any uniform custom or course which it regularly practiced with respect to the signing of conditional sale contracts which it entered into with vendees?

A Our uniform plan was to use the printed form of which this is a copy.

Q Printed form of what?

A Of conditional sale contract.

Q I mean with respect to the signature of the Purcell Safe Company?

A The printed form "Purcell Safe Company" at the bottom of the contract. No one was authorized or allowed to use any other form of signature or any other name except what was contained on that contract. They have done that ever since I have been with the company and several years previously.

Q Do you know of your own knowledge whether or not the officers of the company, in making conditional sale contracts, follow such a custom?

A Invariably. Never any other form used or any other custom.

Q At the time you say this was signed by Mr. Osborn and bore the signature of the Purcell Safe Company in the manner you have stated, was that paper thus executed in duplicate?

A It was.

Q One copy was delivered to Mr. Osborn and one retained by you in behalf of the Purcell Safe Company?

A Yes.

Q The two copies being originals?

A Yes.

Q I will ask you whether or not at that time, before the mutual delivery of these two originals between the Purcell Safe Company and S. C. Osborn, both of such originals bore

the signatures of S. C. Osborn and the signature of the Purcell Safe Company, as you have described the last signature?

A Both were identical.

Q But did they bear these signatures before the delivery of them?

A Certainly.

Q Now when was that contract made with reference to its date? It was dated February 16, 1910.

A It was made on that date.

Q Do you know what was the place of residence of Mr. Osborn at that time?

A Seattle.

Q In King County?

A King County.

Q I will ask you when these safe deposit boxes were delivered to Mr. Osborn and where they were delivered?

A We commenced delivering them this date at his vault on Third Avenue, in the building he was occupying—I don't recollect the number—it is shown on here, 507 Third Avenue; the delivery was begun that same day and continued through the next day, possibly.

Q Were they all delivered at the time of making this contract? one delivery?

A Yes. They were delivered from the depot to the vault.

Q The contract was filed in the Auditor's office, your copy, on the date shown, February 21, 1910, was it?

A Yes; it was sent to the office before that, but that's the date the receipt bore when it came to us.

Q Now, Mr. Lynch, at the time S. C. Osborn went into bankruptcy this property went into the possession of the Trustee in Bankruptcy, did it not?

A So I understand.

Q Mr. Lynch, I exhibit to you a paper purporting to be a promissory note dated February 16, 1910, for the sum of \$3,174.00, payable one year after date, to the order of the Purcell Safe Company, executed by S. C. Osborn; do you know

whether that is the note executed by Mr. Osborn at the time of making this conditional sale contract?

A It was.

Q That is his signature upon the note?

A Yes.

By permission of the Court the note referred to was read into the record as follows:

“3285.09

111.09		51477	2/16/11
\$3174.	(June)	(Protest)	February 16, 1910.

One year after date, without grace, for value received I promise to pay to the order of Purcell Safe Co. at Seattle, Wn. Thirty One Hundred and Seventy four dollars in Gold Coin of the United States of America, of the present standard value, with interest thereon, in like Gold Coin, at the rate of 7 per cent. per annum from Feb. 16, 1910 until paid. Interest to be paid semi-annually and if not so paid the whole sum of both principal and interest to become immediately due and collectible, at the option of the holder of this Note. And in case suit or action is instituted to collect this Note, or any portion thereof I promise and agree to pay, in addition to the costs and disbursements provided by statute Fifty Dollars in like Gold Coin for Attorney's fees in said suit or action.

This note is given in  
accordance with contract for S. C. OSBORN CO.  
Safe Deposit Boxes under date S. C. OSBORN.  
Feb. 16, 1910.  
No. ....

Due Feb. 16, 1911.

(Endorsed)

“S. C. Osborn

Purcell Safe Co.

Frank Purcell

Pres. & Treas.

1910

Novr. 28 Received interest from

Febry. 16, 1910, to Aug. 16, 1910, \$111.09"

Q Mr. Lynch, this note secured by the conditional sale contract was at some time after the making of it turned into the Seattle National Bank, was it not?

A Yes.

Q Do you know what for?

A As collateral for a loan which was afterwards paid.

Q A loan to the Purcell Safe Company?

A A loan to the Purcell Safe Company.

Q Which was afterwards paid?

A Yes.

Q I will ask you to whom the note and conditional sale contract now belong?

A To the Purcell Safe Company.

Q What payments have been made upon the note?

A The amount shown on the back of the note, interest from February 16, 1910, to August 16, 1910, \$111.09.

Q Has any further amount been paid on the note?

A No.

Q This note matured February 16, 1911?

A Yes, February 16, 1911.

MR. RAMSEY: I suppose it is not denied that we have asked the Trustee in Bankruptcy for, or demanded of the Trustee the possession of the property before bringing this petition?

MR. McCLURE: It is impossible to redeliver these boxes. The understanding is that the lien, if any, must be impressed upon the funds.

THE COURT: As to the fact that the Trustee became responsible for them, there is no question raised as to that.

MR. RAMSEY: There was default in the payment of the obligation, and if the conditional sale contract was good we would be entitled to possession.

Q The conditional sale agreement, Mr. Lynch, mentions the total consideration of \$5,174.00, as the purchase price of these same deposit boxes; was part of that paid at the time of making the agreement, and, if so, how much?

A Part of that was paid as shown on the contract. Two thousand dollars cash was paid to me by check on that date.

Q February 16, 1910?

A February 16th and I had it cashed two hours afterwards.

MR. McCLURE: There is no dispute as to the amount?

MR. RAMSEY: No. That's all.

#### CROSS-EXAMINATION BY MR. McCLURE.

Q Is there anything in regard to that signature on this particular contract—

THE COURT: He testified, I think, to all that was done and he said it was in accordance with the universal custom of himself and other officers. "Other officers" is about all additional that has come into the case that I can see. That much it has been strengthened from what it was before.

Witness excused.

Testimony closed.

Indorsed: Transcript of Testimony taken in re claim of Purcell Safe Company for re-delivery of goods. Filed Aug. 12, 1911, 11:00 a. m. John P. Hoyt, Referee. Filed in the U. S. District Court, Western Dist. of Washington, Aug. 14, 1911. F. A. Simpkins, Acting Clerk.

#### THE GENUINE HALL'S SAFE & LOCK CO.'S SAFES

Read this contract before signing.

PURCELL SAFE CO.

Seattle, Wash.

Seattle, Wash., Feb. 16, 1910.

Please deliver the one group of 1020 Safe Deposit Boxes built for us and already in freight depot in Seattle marked to S. C. Osborn & Co., Town of Seattle, County of King, State of

Wash., via team from which we agree to pay to your order the sum of (\$5,174.00) Five thousand one hundred & seventy-four dollars as follows:

\$2,000.00 cash paid this day and a note for the balance \$3,174.00 for 12 months from this date bearing interest at 7% per annum.

For safe delivery at 507 Third Ave., Seattle, Wash.

The undersigned agree to forward the cash payment, together with the notes above described, to you upon arrival of safe, failing in which, the whole amount shall become due and payable immediately. It is further agreed that the undersigned shall not permit the same to be removed from the place above mentioned, nor injured nor taken by any other person or process. And it is agreed that you do not part with, nor relinquish your claim on, or title to said safe until the cash or deferred payment or notes are fully paid, and in default of any or all of the payments for the safe or conditions as agreed you or your agent may, without process of law, take possession of and remove said safe, and retain any payments that may have been made on account of said safe, in lieu of the use of said safe, as rent or charges and damages on safe. ALL PAYMENTS TO BE MADE TO PURCELL SAFE CO., at the OFFICE OF THE COMPANY, SEATTLE, WASH. The undersigned agree to keep the above safe insured for its full value in a good company at its own expense, and in the event of a fire this contract shall be a lien upon said insurance policy for the amount that may at that time be due upon this contract. In the event of failure to make payments when due, interest at the rate of ten per cent. per annum shall be paid upon such deferred payments from the time when due until paid, and if for any cause PURCELL SAFE CO. shall bring suit to recover possession of said safe, in accordance with the terms of this contract, the undersigned agrees to pay attorney's fees and costs of Court. It is understood and agreed by the undersigned that all the conditions of the order are contained in the above, that no verbal statement or agreements with the

agent shall bind the PURCELL SAFE CO. to anything not written in the body of this order and that this order is not subject to be countermanded.

S. C. OSBORN CO.

S. C. OSBORN.

Salesmen are not allowed to collect for us. Any payments made to them will be at your risk.

PURCELL SAFE CO.

State of Washington,  
County of King.—ss.

I, Otto A. Case, Auditor of King County, State of Washington, and ex-officio Recorder of Deeds, in and for said County, do hereby certify the above and foregoing to be a true and correct copy of a Conditional Sale.

The Genuine Hall's Safe & Lock Co.

Purcell Safe Co.

to

S. C. Osborne & Co.

as filed in this office in Records of King County.

(Seal)

Witness my hand and official seal this 12th day of May, 1911.

OTTO A. CASE,

Auditor of King County, Washington.

No. 8260

By C. F. Gage, Deputy.

Petitioners Exhibit "1." Filed at request of Vendor. Feb. 21, 1910, at 31 min. past 3 p. m. Records of King County, Wash. Otto A. Case, County Auditor. J. F. Lottsfeldt, Deputy. Fee 50 cts. Filed May 12, 1911. John P. Hoyt, Referee. Filed in the U. S. District Court, Western Dist. of Washington, Aug. 14, 1911. F. A. Simpkins, Acting Clerk.

THE GENUINE HALL'S SAFE & LOCK CO.'S SAFES

Read this contract before signing.

PURCELL SAFE CO.

Seattle, Wash.

Seattle, Wash., Feb. 16, 1910.

Please deliver the one group of 1020 Safe Deposit Boxes built for us and already in freight depot in Seattle marked to S. C.



Osborne & Co., Town of Seattle, County of King, State of Wash., via team from which we agree to pay to your order the sum of (\$5,174.00) Five thousand one hundred & seventy-four dollars as follows:

\$2,000.00 cash paid this day and a note for the balance \$3,174.00 for 12 months from this date bearing interest at 7% per annum.

For safe delivery at 507 Third Ave., Seattle, Wash.

The undersigned agree to forward the cash payment, together with the notes above described, to you upon arrival of safe, failing in which, the whole amount shall become due and payable immediately. It is further agreed that the undersigned shall not permit the same to be removed from the place above mentioned, nor injured nor taken by any other person or process. And it is agreed that you do not part with, nor relinquish your claim on, or title to said safe until the cash or deferred payment or notes are fully paid, and in default of any or all of the payments for the safe or conditions as agreed you or your agent may, without process of law, take possession of and remove said safe, and retain any payments that may have been made on account of said safe, in lieu of the use of said safe, as rent or charges and damages on safe. ALL PAYMENTS TO BE MADE TO PURCELL SAFE CO., at the OFFICE OF THE COMPANY, SEATTLE, WASH. The undersigned agree to keep the above safe insured for its full value in a good company at its own expense, and in the event of a fire this contract shall be a lien upon said insurance policy for the amount that may at that time be due upon this contract. In the event of failure to make payments when due, interest at the rate of ten per cent. per annum shall be paid upon such deferred payments from the time when due until paid, and if for any cause PURCELL SAFE CO. shall bring suit to recover possession of said safe, in accordance with the terms of this contract, the undersigned agrees to pay attorney's fees and costs of Court. It is understood and agreed by the undersigned that all the conditions of the order are con-

tained in the above, that no verbal statement or agreements with the agent shall bind the PURCELL SAFE CO. to anything not written in the body of this order and that this order is not subject to be countermanded.

S. C. OSBORN CO.

S. C. OSBORN.

Salesmen are not allowed to collect for us. Any payments made to them will be at your risk.

PURCELL SAFE CO.

State of Washington,  
County of King.

I, Otto A. Case, Auditor of King County, State of Washington, and ex-officio Recorder of Deeds, in and for said County, do hereby certify the above and foregoing to be a true and correct copy of a Conditional Sale.

Purcell Safe Co.

to

S. C. Osborne

as filed in this office of King County.

(Seal)

Witness my hand and official seal this 5th day of Aug. 1911.

OTTO A. CASE,

Auditor of King County, Washington.

No. 8403

By W. W. Castle, Deputy.

Petitioner's Exhibit "1-A." Filed at request of Vendor. Feb. 21, 1910, at 31 min. past 3 p. m. Records of King County, Wash. Otto A. Case, County Auditor. J. F. Lottsfeldt, Deputy. Fee 50 cts. Filed Aug. 7, 1911, 9:00 a. m. John P. Hoyt, Referee. Filed in the U. S. District Court, Western Dist. of Washington, Aug. 14, 1911. F. A. Simpkins, Acting Clerk.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

In the Matter of S. C. OSBORN doing business as S. C. OSBORN & CO.,  <i>Bankrupt.</i>	}       }	No. 4474. In Bankruptcy.
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ORDER OF REFEREE DENYING PETITION OF PURCELL SAFE COMPANY IN RE CLAIMED CONDITIONAL SALE CONTRACT.

This cause having heretofore come on for hearing on the petition of the Purcell Safe Company, a corporation, that a certain group of 1020 Safe Deposit Boxes delivered by the petitioner to the bankrupt on or about the 16th day of February, 1910, and installed in those certain premises known as No. 507 Third Avenue, Seattle, King County, Washington, be adjudged the property of the petitioner pursuant to a certain purported Conditional Sale Contract claimed to have been entered into by the petitioner with the bankrupt on said February 16th, 1910, in and by virtue of which the petitioner claims that it agreed to sell and deliver to the bankrupt at Seattle, Washington, the said Safe Deposit Boxes for the sum of \$5174.00 of which sum \$2000.00 was on said February 16th, 1910, paid in cash, and the balance was to be paid in twelve months after said February 16th, 1910, with interest at seven per cent. per annum and was evidenced by a promissory note of said bankrupt made and delivered simultaneously with said contract, which said contract was claimed by the petitioner to have been filed in the office of the County Auditor of King County, Washington, on February 21st, 1910, the petitioner appearing by Hughes, McMicken, Dovell & Ramsay, its attorneys, and the trustee appearing in person and by McClure &

McClure, his attorneys, and it having been then and there by the said parties respectively agreed in open court that the validity of said alleged conditional sale contract be submitted to the court for its determination, and that in case said contract should be held by the court to reserve in the petitioner the title to the property therein described, the petitioner should be entitled to have and receive payment in cash for its said claim instead of the possession of the property in said contract described, the said agreement being made by petitioner expressly upon condition that sufficient funds be retained by the trustee pending final determination herein, or on review, for full payment thereof, and that in case the said conditional sale contract should be by the court held and adjudged to be invalid and said sale should be held to be absolute, the petitioner should be allowed to prove its claim upon said note in the customary form, and according to the rules;

And James Lynch, one of the officers of the petitioner, having been duly called and sworn, and having testified as a witness in behalf of the petitioner, and certified copies of said alleged conditional sale contract having been offered and received in evidence, and the court having considered the evidence and the argument of counsel thereon, being fully advised, it appearing to the court that the original contract was not signed by the petitioner as required by the laws of the State of Washington, and that the sale of the property mentioned in said contract to the bankrupt was and is an absolute and unconditional sale, to which findings petitioner excepts;

It is by the court adjudged and decreed:

1. That said petition of said Purcell Safe Company for the return of the property in said contract described be and the same is hereby denied, to which petitioner excepts.

2. That the said contract claimed by said petitioner as a conditional sale contract be and the same is hereby adjudged and decreed to be invalid and of no force or effect, to which petitioner excepts.

3. That the sale made by the petitioner, the Purcell Safe

Company, to the bankrupt, of the property described in said contract, was and is an unconditional and absolute sale thereof, to which petitioner excepts.

4. That the claim of the said Purcell Safe Company upon the said promissory note for \$3174.00, with interest thereon at the rate of seven per cent. per annum from August 16th, 1910, to December 28th, 1910, (the same being the date of the adjudication of bankruptcy herein), amounting in all to the sum of \$3255.46, be, and the same is hereby allowed as a general unsecured claim, without petitioner being required to file further or other proof of debt herein, and without prejudice to petitioner's right to review this order denying its said petition, subject to such exceptions or objections as may hereafter be filed.

Dated at Seattle, in said district, this 11th day of August, 1911.

JOHN P. HOYT, Referee.

Endorsed: Order of Referee denying petition of Purcell Safe Company in re claimed Conditional Sale Contract. Filed Aug. 11th, 1911, 3 p. m. John P. Hoyt, Referee. Filed in the U. S. District Court, Western Dist. of Washington, Aug. 14, 1911. F. A. Simpkins, Acting Clerk.

*In the District Court of the United States for the Western District of Washington, Northern Division.*

In the Matter of S. C. OSBORNE, doing business as S. C. OSBORNE COMPANY,  <i>Bankrupt.</i>	}	No. 4474. In Bankruptcy.
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PETITION OF PURCELL SAFE COMPANY FOR A REVIEW OF THE ORDER IN RE CONDITIONAL SALE CONTRACT

*To the Honorable John P. Hoyt, Referee in Bankruptcy:*

Comes now the Purcell Safe Company, a corporation, and respectfully shows:

I.

That heretofore it made and filed herein its petition claiming the return to it of certain safe deposit boxes heretofore delivered by it to the above named bank; that on the 11th day of August, 1911, an order, a copy of which is hereto annexed, was made and entered herein in the matter of said petition to which order the petitioner Purcell Safe Company duly excepted.

II.

That said order was and is erroneous in the following particulars:

(a) In finding that the conditional sale contract mentioned in the petition of said Purcell Safe Company was not signed by it as required by the laws of the State of Washington.

(b) In finding that the sale of the property mentioned in said contract to the bankrupt was and is an absolute and unconditional sale.

(c) In adjudging that said petition of the Purcell Safe Company for the return of said property be denied.

(d) In adjudging that said conditional sale contract is invalid and of no force or effect.

(e) In adjudging that the sale by said Purcell Safe Company to said bankrupt of the property described in said contract was and is an unconditional and absolute sale thereof.

(f) That said order is contrary to law and is not supported by the proof at the hearing of said petition.

WHEREFORE your petitioner feeling aggrieved because of said order prays that the same may be reviewed and reversed as provided in the bankruptcy act of 1898 and the general order XXVII.

Dated at Seattle in said District, this 11th day of August, A. D. 1911.

PURCELL SAFE COMPANY,

Petitioner.

By Hughes, McMicken, Dovell & Ramsey,

Its Attorneys.

## COPY

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

<p>In the Matter of S. C. OSBORN, doing business as S. C. OSBORN &amp; COMPANY,  <i>Bankrupt.</i></p>	}	<p>No. 4474. In Bankruptcy.</p>
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ORDER OF REFEREE DENYING PETITION OF PUR-  
CELL SAFE COMPANY IN RE CLAIMED  
CONDITIONAL SALE CONTRACT.

This cause having heretofore come on for hearing, on the petition of the Purcell Safe Company, a corporation, that a certain group of 1020 Safe Deposit Boxes delivered by the petitioner to the bankrupt on or about the 16th day of February, 1910, and installed in those certain premises known as No. 507 Third Avenue, Seattle, King County, Washington, be adjudged the property of the petitioner pursuant to a certain purported conditional sale contract claimed to have been entered into by the petitioner with the bankrupt on said February 16th, 1910, in and by virtue of which the petitioner claims that it agreed to sell and deliver to the bankrupt at Seattle, Washington, the said Safe Deposit Boxes for the sum of \$5174.00 of which sum \$2000.00 was on said February 16th, 1910, paid in cash, and the balance was to be paid in twelve months after said February 16th, 1910, with interest at seven per cent. per annum and was evidenced by a promissory note of said bankrupt made and delivered simultaneously with said contract, which contract was claimed by the petitioner to have been filed in the office of the County Auditor of King County, Washington, on February 21st, 1910, the petitioner appearing by Hughes, McMicken, Dovell & Ramsey, its attorneys, and the trustee appearing in person and by McClure & McClure, his attorneys, and it having been then and there by the said parties respectively agreed in open court that the



validity of said alleged conditional sale contract be submitted to the court for its determination, and that in case said contract should be held by the court to reserve in the petitioner the title to the property therein described, the petitioner should be entitled to have and receive payment in cash for its said claim instead of the possession of the property in said contract described, the said agreement being made by petitioner expressly upon condition that sufficient funds be retained by the trustee pending final determination herein, or on review, for full payment thereof, and that in case the said conditional sale contract should be by the court held and adjudged to be invalid and said sale should be held to be absolute, the petitioner should be allowed to prove its claim upon said note in the customary form, and according to the rules;

And James Lynch, one of the officers of the petitioner, having been duly called and sworn, and having testified as a witness in behalf of the petitioner, and certified copies of said alleged conditional sale contract having been offered and received in evidence, and the court having considered the evidence and the argument of counsel thereon, being fully advised, it appearing to the court that the original contract was not signed by the petitioner as required by the laws of the State of Washington, and that the sale of the property mentioned in said contract to the bankrupt was and is an absolute and unconditional sale, to which findings petitioner excepts;

It is by the court adjudged and decreed:

1. That said petition of said Purcell Safe Company for the return of the property in said contract described be and the same is hereby denied, to which petitioner excepts.

2. That the said contract claimed by said petitioner as a conditional sale contract be and the same is hereby adjudged and decreed to be invalid and of no force or effect, to which petitioner excepts.

3. That the sale made by the petitioner, the Purcell Safe Company, to the bankrupt, of the property described in said

contract, was and is an unconditional and absolute sale thereof, to which petitioner excepts.

4. That the claim of the said Purcell Safe Company upon the said promissory note for \$3174.00 with interest thereon at the rate of seven per cent. per annum from August 16th, 1910, to December 28th, 1910, (the same being the date of the adjudication of bankruptcy herein), amounting in all to the sum of \$3255.46, be, and the same is hereby allowed as a general unsecured claim, without petitioner being required to file further or other proof of debt herein, and without prejudice to petitioner's rights to review this order denying its said petition, subject to such exceptions or objections as may hereafter be filed.

Dated at Seattle, in said District, this 11th day of August, 1911.

JOHN P. HOYT, Referee.

Copy of within ..... received, and due service of same acknowledged this 12th day of August, 1911.

McCLURE & McCLURE,  
Attys. for Trustee.

Endorsed: Petition of Purcell Safe Company for review of the Order in re Conditional Sale Contract. Filed Aug. 12th, 1911, 11 a. m. John P. Hoyt, Referee. Filed in the U. S. District Court, Western Dist. of Washington, Aug. 14, 1911. F. A. Simpkins, Acting Clerk.

*In the District Court of the United States, for the Western  
District of Washington, Northern Division.*

In the Matter of S. C. OSBORN,  
doing business as S. C. OSBORN &  
Co., Bankrupt.

No. 4474.  
In Bankruptcy.

A petition for the review of the Order made and filed herein on the 11th day of August, 1911, denying the Petition of the Purcell Safe Company, having been filed by and on behalf of said Purcell Safe Company, the undersigned, the Referee in Bankruptcy before whom said matter is pending, and who made said order, certifies and returns as follows, to-wit:

That said order was made after the introduction of proofs at a hearing regularly had for that purpose; that as a part of such proofs there was introduced certified copies of the alleged Conditional Contract of Sale, one of which was in such form that it was practically a fac simile of the original Contract so far as its form and the manner of its signing and the relation of the names of the respective parties thereto was concerned, and said undersigned was of the opinion that the printed signature "Purcell Safe Company," placed in the margin of said Contract, did not in itself show any signing of said Contract on the part of said Purcell Safe Company, the petitioning corporation, and the proof offered on the part of said Purcell Safe Company, by which it was sought to show that such printed name on the blank was a sufficient signature, did not in his opinion establish such fact. For that reason said undersigned was of the opinion and held that the alleged Conditional Sale Contract had never been signed by the said Purcell Safe Company, a corporation, and for that reason was invalid as such so far as creditors of the bankrupt were concerned.

He, therefore, returns with this Certificate the original

petition of said Purcell Safe Company, the Answer of the Trustee thereto, said exhibits introduced upon the hearing, together with a transcript of the evidence taken on behalf of the claimant at such hearing, said Order of August 11th, 1911, and said Petition for Review, as constituting together a sufficient Certificate and Return to enable a Judge of the above named Court to review said Order.

All of which is respectfully submitted.

Dated at Seattle, in said District, this 14th day of August, 1911.

JOHN P. HOYT, Referee in Bankruptcy.

Endorsed: Certificate and Return. Filed in the U. S. District Court, Western Dist. of Washington. August 14, 1911. F. A. Simpkins, Acting Clerk.

*In the District Court of the United States for the Western District of Washington, Northern Division.*

In the Matter of S. C. OSBORN, doing business as S. C. OSBORN COMPANY,  <i>Bankrupt.</i>	}       No. 4474. In Bankruptcy.
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#### MEMORANDUM DECISION ON CLAIM OF PURCELL SAFE COMPANY.

This case comes for review of a decision and order of the Referee denying the validity of an alleged Conditional Sale Contract pursuant to which the bankrupt received 1020 Safe Deposit Boxes, theretofore owned by the Purcell Safe Company, a Corporation.

By the terms of a Statute of this state, to give such a contract force and validity against bona fide creditors of the

vendee in possession of the property sold conditionally, it is essential that a memorandum of the agreement be signed by the vendor and the vendee. Pierce's Code 1905 Sec. 6547.

The evidence proves that part of the purchase price for the safe deposit boxes remains unpaid; that the Purcell Safe Company furnishes its agents printed blanks for such contracts, each of which has at the bottom its name "Purcell Safe Co." printed; and that the contract in question was not signed by the vendor otherwise than by adoption by its officers of the printed name as its signature and by the use of said blanks in making said agreement and the signing thereof in duplicate by the vendee.

I do not mean to decide that a corporation may not by a resolution of its board of directors adopt a signature made by type and a printing press for authenticating its contracts; nor that the long continued practice of its officers in issuing contracts so authenticated may not estop it from repudiating obligations assumed in that manner, but I do concur with the Referee in holding that the custom as proved does not meet the plain requirement of, and cannot override, the statute.

The decision and order of the referee is confirmed.

C. H. HANFORD, Judge.

Indorsed: Memorandum Decision on Claim of Purcell Safe Company. Filed in the U. S. District Court, Western Dist. of Washington, Aug. 24, 1911. F. A. Simpkins, Acting Clerk.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

<p>In the Matter of S. C. OSBORN, doing business as S. C. OSBORN &amp; Co.,</p>	}	<p>No. 4474. In Bankruptcy.</p>
<p><i>Bankrupt.</i></p>		

ORDER CONFIRMING DECISION AND ORDER OF  
REFeree DENYING PETITION OF PURCELL SAFE  
COMPANY IN RE CLAIMED CONDITIONAL  
SALE CONTRACT.

This cause having heretofore been heard on review of the decision and order of John P. Hoyt, Referee, in the matter of the petition of the Purcell Safe Company, a corporation, that a certain group of 1020 Safe Deposit Boxes be adjudged the property of said petitioner pursuant to a certain purported conditional sale contract, the petitioner appearing by its attorneys and the trustee appearing by his attorneys, and said matter having been argued and submitted to the court, and the court being fully advised in the premises, it is by the Court, adjudged and decreed:

1. That the decision and order of the Referee be, and the same is hereby confirmed, to which said petitioner excepts.

2. That said petition of said Purcell Safe Company for the return of the property in said contract described, be, and the same is hereby denied, to which petitioner excepts.

3. That the said contract claimed by said petitioner as a conditional sale contract be, and the same is hereby adjudged and decreed to be invalid and of no force or effect, to which petitioner excepts.

4. That the sale made by the petitioner, the Purcell Safe Company, to the bankrupt, of the property described in said

contract, was and is an unconditional and absolute sale thereof, to which petitioner excepts.

5. That the claim of the said Purcell Safe Company upon the said promissory note for \$3174.00, with interest thereon at the rate of seven per cent. per annum from August 16th, 1910, to December 28th, 1910, (the same being the date of the adjudication of bankruptcy herein), amounting in all to the sum of \$3255.46, be, and the same is hereby allowed as a general unsecured claim, without petitioner being required to file further or other proof of debt herein, and without prejudice to petitioner's right to review this order denying its said petition, subject to such exceptions or objections as may hereafter be filed.

Dated at Seattle, in said District, this 25th day of August, 1911.

C. H. HANFORD, Judge.

Service of within Order and receipt of copy admitted this 25th day of August, 1911.

HUGHES, McMICKEN, DOVELL & RAMSEY,  
Attorneys for Purcell Safe Co.

Endorsed: Order confirming decision and order of Referee denying petition of Purcell Safe Company in re claimed conditional sale contract. Filed in the U. S. District Court, Western Dist. of Washington, Aug. 25, 1911. F. A. Simpkins, Acting Clerk, U. S. Dist. Court, Western Dist. of Washington.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

<p>In the Matter of S. C. OSBORN, doing business as S. C. OSBORN &amp; COMPANY,</p>	}	No. 4474.
<p>PURCELL SAFE COMPANY, a cor- poration,</p>	}	
<p><i>Bankrupt.</i></p>		
<p><i>Petitioner.</i></p>		

#### PETITION FOR APPEAL.

*To the Honorable C. H. Hanford, District Judge, and one of  
the Judges of the above named Court presiding therein:*

The above named petitioner in the above entitled matter feeling itself aggrieved by the order and decree made and entered by the above named Court in the above entitled matter, under date of August 25, 1911, wherein and whereby, among other things, it was and is ordered and decreed that the order of Honorable John P. Hoyt, Referee, denying the petition of the Purcell Safe Company in the above entitled matter be confirmed, that the contract claimed by said Purcell Safe Company as a conditional sale contract is invalid and of no force or effect; that the sale made by said petitioner, Purcell Safe Company, to the bankrupt of the property described in said contract is an unconditional and absolute sale thereof, and that the petition of said Purcell Safe Company, for the return of the property in said contract described, be denied, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from said order and decree, and particularly from the part thereof above specified, for the reasons set forth in the assignment of errors which is filed herewith, and the said petitioner prays that this its petition for



its said appeal may be allowed; that citation issue to the duly appointed and acting trustee of the estate of said bankrupt, and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 30th day of September, A. D. 1911.

HUGHES, McMICKEN, DOVELL & RAMSEY,  
Solicitors for Petitioner.

The foregoing claim of appeal is allowed.

Dated this 30th day of September, A. D. 1911.

C. H. HANFORD,  
United States District Judge, Presiding in the above named  
Court.

Service of the within paper, petition for appeal and order allowing the same, on the undersigned, this 30th day of September, A. D. 1911, is hereby admitted.

McCLURE & McCLURE,  
Solicitors for Nelson W. Parker, Trustee in the Matter of S.  
C. Osborn, doing business as S. C. Osborn & Company,  
Bankrupt.

Indorsed: Petition for Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Sep. 30, 1911. F. A. Simpkins, Acting Clerk.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

<p>In the Matter of S. C. OSBORN, doing business as S. C. OSBORN &amp; COMPANY,  <i>Bankrupt.</i></p>	}	No. 4474.
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### ASSIGNMENT OF ERRORS

Comes now the petitioner, Purcell Safe Company, and files the following assignment of errors, upon which it will rely on its appeal from the order and decree made by this Honorable Court on the 25th day of August, 1911, in the above entitled matter:

#### I.

The United States District Court in and for the Western District of Washington, Honorable C. H. Hanford, Presiding, erred in confirming the decision and order of Honorable John P. Hoyt, Referee, in the matter of the petition of the Purcell Safe Company that a certain group of 1020 Safe Deposit Boxes be adjudged the property of said petitioner, pursuant to a certain conditional sale contract between said petitioner and the said bankrupt.

#### II.

The said Court erred in adjudging and decreeing that said contract claimed by said petitioner to be a conditional sale contract was invalid and of no force or effect as a conditional sale contract.

#### III.

The said Court erred in adjudging and decreeing that the sale made by the petitioner, the Purcell Safe Company, to the

bankrupt of the property described in said contract was and is an unconditional and absolute sale thereof.

#### IV.

The said Court erred in adjudging and decreeing that the said petition of said Purcell Safe Company, for the return of the property in said contract described, be denied and in denying the same.

Wherefore, the petitioner prays that the said decree of said Court be reversed and the said Court be directed to enter a decree ordering the return of said property to this petitioner.

HUGHES, McMICKEN, DOVELL & RAMSEY,  
Solicitors for Purcell Safe Company.

Copy of within Assignment of Errors received, and due service of same acknowledged this 30th day of September, 1911.

McCLURE & McCLURE,  
Solicitors for Nelson W. Parker, as Trustee, etc.

Indorsed: Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, Sep. 30, 1911. F. A. Simpkins, Acting Clerk.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

<p>In the Matter of S. C. OSBORN, doing business as S. C. OSBORN &amp; COMPANY,</p> <p style="text-align: right;"><i>Bankrupt.</i></p> <p>PURCELL SAFE COMPANY, a cor- poration,</p> <p style="text-align: right;"><i>Petitioner.</i></p>	}	No. 4474.
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#### ORDER FIXING AMOUNT OF COST BOND

This cause coming on for hearing upon the application of petitioner, Purcell Safe Company, to have the Court fix the amount of the cost bond, and the Court being duly advised in the premises:

It is hereby ordered and decreed that the amount of the cost bond of petitioner on appeal herein be and is hereby fixed at the sum of Five hundred dollars.

Done in open Court this 30th day of September, A. D. 1911.

C. H. HANFORD,

United States District Judge, Presiding in above named Court.

Service of copy of the foregoing order is hereby admitted this 30th day of September, A. D. 1911.

McCLURE & McCLURE,

Solicitors for Nelson W Parker, as Trustee in above entitled matter.

Indorsed: Order Fixing Amount of Cost Bond. Filed in the U. S. District Court, Western Dist. of Washington, Sep. 30, 1911. F. A. Simpkins, Acting Clerk.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

<p>In the Matter of S. C. OSBORN, doing business as S. C. OSBORN &amp; COMPANY,</p>	}	No. 4474.
<i>Bankrupt.</i>		
<p>PURCELL SAFE COMPANY, a cor- poration,</p>		
	<i>Petitioner.</i>	

### BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS, That we Purcell Safe Company, a corporation, as Principal, and The United States Fidelity & Guaranty Company, a body corporate, duly incorporated under the laws of the State of Maryland, and authorized to transact the business of surety in the State of Washington, as surety are held and firmly bound unto Nelson W. Parker, as Trustee of the Estate of S. C. Osborn, doing business as S. C. Osborn & Company, Bankrupt, and his successors, in the sum of Five hundred dollars, for the payment of which sum well and truly to be made, we jointly and severally bind ourselves, our successors and assigns, firmly by these presents.

Sealed with our seals and dated this 30th day of September, A. D. 1911.

The condition of this obligation is such that

Whereas, in the above entitled Court and proceeding an order and decree was entered on the 25th day of August, 1911, wherein and whereby, among other things, it was and is ordered and decreed that the order of Honorable John P. Hoyt, Referee, denying the petition of the Purcell Safe Company in the above entitled matter be confirmed, that the contract claimed by said Purcell Safe Company as a conditional sale contract is invalid and of no force or effect; that the sale made by the

petitioner, Purcell Safe Company, to the bankrupt of the property described in said contract is an unconditional and absolute sale thereof, and that the petition of said Purcell Safe Company, for the return of the property in said contract described, be denied; and the said Purcell Safe Company, having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the said decree, and a citation directed to the said Nelson W. Parker, as Trustee of the Estate of S. C. Osborn, doing business as S. C. Osborn & Company, Bankrupt, is about to be issued, citing and admonishing him to be and appear at an United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, California;

Now, therefore, the condition of the above obligation is such that if the said Purcell Safe Company shall prosecute its said appeal to effect and answer all costs that may be awarded against it, if it fail to make its plea good, then the above obligation is to be void; otherwise to remain in full force and virtue.

PURCELL SAFE COMPANY,

By Hughes, McMicken, Dovell & Ramsey,

Its Attorneys herein.

THE UNITED STATES FIDELITY & GUARANTY CO.,

(Seal)

By Henry McClure and J. A. Cathcart,

Its Attorneys in fact.

The foregoing bond is hereby approved September 30, 1911.

C. H. HANFORD, Judge.

Copy of within bond received, and due service of same acknowledged this 30th day of September, 1911.

McCLURE & McCLURE,

Solicitors for Nelson W. Parker, as Trustee, etc.

Indorsed: Bond on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Sep. 30, 1911. F. A. Simpkins, Acting Clerk.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

In the Matter of S. C. OSBORN,  
doing business as S. C. OSBORN  
& COMPANY,

*Bankrupt.*

PURCELL SAFE COMPANY, a cor-  
poration,

*Petitioner and Appellant.*

vs.

NELSON W. PARKER as Trustee of  
the Estate of S. C. Osborn, doing  
business as S. C. Osborn & Company,  
Bankrupt,

*Appellee.*

No. 4474.

#### ORDER TO TRANSMIT ORIGINAL EXHIBIT

Now on the 5th day of October, 1911, upon motion of Messrs. Hughes, McMicken, Dovell & Ramsey, and for sufficient cause appearing, it is ordered that the Petitioner's original Exhibit "1-A" filed and introduced as evidence upon the trial of this cause, be by the Clerk of this Court forwarded to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, there to be inspected and considered together with the transcript of the record on appeal in this cause.

C. H. HANFORD, Judge.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

In the Matter of S. C. OSBORN,  
doing business as S. C. OSBORN &  
COMPANY,

*Bankrupt.*

PURCELL SAFE COMPANY, a cor-  
poration,

*Petitioner and Appellant.*

vs.

NELSON W. PARKER, as Trustee of  
the Estate of S. C. Osborn, doing  
business as S. C. Osborn & Company,  
Bankrupt,

*Appellee.*

No. 4474.

LODGED COPY

CITATION ON APPEAL

United States of America.—ss.

*The President of the United States to Nelson W. Parker, as  
Trustee of the Estate of S. C. Osborn, doing business as  
S. C. Osborn & Company, Bankrupt. GREETING:*

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco in the State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein Purcell Safe Company, a corporation, is appellant, and you, the said Nelson W. Parker as Trustee of the Estate of S. C. Osborn, doing business as S. C. Osborn & Company, Bankrupt, are appellee, to show



cause, if any there be why the decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable C. H. Hanford, Judge of said District Court, this 30th day of September, 1911, and of the independence of the United States the one hundred and thirty-sixth year.

C. H. HANFORD,  
Judge of the United States District Court for the Western  
District of Washington.

Attest: F. A. Simpkins, Acting Clerk of the United States  
(Seal) District Court for the Western District of Washington.

Indorsed: Lodged Copy. No. 4474. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of S. C. Osborn, doing business as S. C. Osborn & Company, Bankrupt. Purell Safe Company, a corporation, Petitioner and Appellant, vs. Nelson W. Parker, as Trustee of the Estate of S. C. Osborn, doing business as S. C. Osborn & Company, Bankrupt, Appellee. Citation on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Sep. 30, 1911. F. A. Simpkins, Acting Clerk. Otto B. Rupp, Hughes, McMicken, Dovell & Ramsey, Attorneys for Petitioner, 661-670 Colman Building, Seattle, Washington.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

In the Matter of S. C. OSBORN,  
doing business as S. C. OSBORN &  
COMPANY,

*Bankrupt.*

PURCELL SAFE COMPANY, a cor-  
poration,

*Petitioner and Appellant.*

vs.

NELSON W. PARKER, as Trustee of  
the Estate of S. C. Osborn, doing  
business as S. C. Osborn & Company,  
Bankrupt,

*Appellee.*

No. 4474.

#### CITATION ON APPEAL

United States of America.—ss.

*The President of the United States to Nelson W. Parker, as  
Trustee of the Estate of S. C. Osborn, doing business as  
S. C. Osborn & Company, Bankrupt. GREETING:*

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco in the State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein Purcell Safe Company, a corporation, is appellant, and you, the said Nelson W. Parker as Trustee of the Estate of S. C. Osborn, doing business as S. C. Osborn & Company, Bankrupt, are appellee, to show

cause, if any there be why the decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable C. H. Hanford, Judge of said District Court, this 30th day of September, 1911, and of the independence of the United States the one hundred and thirty-sixth year.

C. H. HANFORD,  
Judge of the United States District Court for the Western  
District of Washington.

Attest: F. A. Simpkins, Acting Clerk of the United States  
(Seal) District Court for the Western District of Washington.

Service of the foregoing Citation upon said Appellee this 30th day of September, A. D. 1911, is hereby acknowledged.

McCLURE & McCLURE,  
Solicitors for said Nelson W. Parker, as Trustee of the Estate  
of S. C. Osborn, doing business as S. C. Osborn & Com-  
pany, Bankrupt, Appellee.

Received copy of the foregoing Citation lodged with me for Appellee this 30th day of September, 1911.

F. A. SIMPKINS,  
Acting Clerk of said Court.

Indorsed: Original. No. 4474. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of S. C. Osborn, doing business as S. C. Osborn & Company, Bankrupt. Purcell Safe Company, a corporation, Petitioner and Appellant, vs. Nelson W. Parker, as Trustee of the Estate of S. C. Osborn, doing business as S. C. Osborn & Company, Bankrupt, Appellee. Citation on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Sep. 30, 1911. F. A. Simpkins, Acting Clerk. Otto B. Rupp, Hughes, McMicken, Dovell & Ramsey, Attorneys for Petitioner, 661-670 Colman Building, Seattle, Washington.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

IN the Matter of S. C. OSBORN,  
doing business as S. C. OSBORN &  
COMPANY,

*Bankrupt.*

PURCELL SAFE COMPANY, a cor-  
poration,

*Petitioner and Appellant.*

vs.

NELSON W. PARKER, as Trustee of  
the Estate of S. C. Osborn, doing  
business as S. C. Osborn & Company,  
Bankrupt,

*Appellee.*

No. 4474.

### STIPULATION

IT IS HEREBY STIPULATED by and between the parties hereto that the Clerk of said court in preparing and certifying to the United States Circuit Court of Appeals the record herein on the appeal of said Purcell Safe Company, shall include therein transcript of the following papers and proceedings, and none other, which papers and proceedings contain a full and complete record in said cause of all that is necessary to the determination of the matters involved in said appeal and embody all of the testimony offered and introduced with reference to said matters, and that the same shall be so certified by the Clerk of said court, viz:

1. Petition of Purcell Safe Company, filed with the referee May 6, 1911.
2. Answer of trustee, filed with referee July 3, 1911.
3. Transcript of testimony taken before referee July 3, 1911.

4. Certified copy of conditional sale agreement, filed with referee, May 12, 1911.

5. Printed certified copy of conditional sale contract filed with referee August 7, 1911.

6. Order of referee denying petition of Purcell Safe Company, dated August 11, 1911.

7. Petition of Purcell Safe Company for review of referee's order, filed with referee August 12, 1911.

8. Certificate and return of referee, filed August 14, 1911.

9. Opinion, filed August 24, 1911.

10. Order confirming decision of order of referee, filed August 25, 1911.

11. Petition for appeal and allowance of same, filed September 30, 1911.

12. Assignment of errors, filed September 30, 1911.

13. Order fixing amount of bond, filed September 30, 1911.

14. Bond on appeal, filed September 30, 1911.

15. Citation on appeal (original) filed September 30, 1911.

16. Citation on appeal (copy) lodged with Clerk, September 30, 1911.

IT IS FURTHER STIPULATED that the original of said certified copy of conditional sale contract filed with the referee August 7, 1911, shall be transmitted by the Clerk of said court with the record herein to the Circuit Court of Appeals.

Dated Oct. 2, 1911.

HUGHES, McMICKEN, DOVELL & RAMSEY,  
Attorneys for Petitioner.

McCLURE & McCLURE,  
Attorneys for Nelson W. Parker, as Trustee of the Estate of  
S. C. Osborn, doing business as S. C. Osborn & Company,  
Bankrupt, Appellee.

Indorsed: Stipulation. Filed in the U. S. District Court, Western District of Washington, Oct. 4, 1911. A. W. Engle, Clerk. F. A. Simpkins, Deputy.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

In the Matter of S. C. OSBORN,  
doing business as S. C. OSBORN &  
COMPANY,

*Bankrupt.*

PURCELL SAFE COMPANY, a cor-  
poration,

*Petitioner and Appellant.*

vs.

NELSON W. PARKER, as Trustee of  
the Estate of S. C. Osborn, doing  
business as S. C. Osborn & Company,

*Appellee.*

No. 4474.

#### CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD

United States of America,  
Western District of Washington.—ss.

I, A. W. Engle, Clerk of the District Court of the United States, for the Western District of Washington, do hereby certify the foregoing 49 printed pages, numbered from 1 to 49, inclusive, to be a full, true and correct copy of the record and proceedings in the above and foregoing entitled cause, as is called for by the Stipulation of the Attorneys for Petitioner and Appellant as the same remain of record and on file in the office of the Clerk of the said Court, save and excepting Petitioner's Exhibit "1-A" separately certified of even date herewith, and transmitted to the Circuit Court of Appeals, there to be inspected and considered, together with the record upon appeal in this cause—said Exhibit being transmitted pursuant to the Order of the District Court made in the said cause October 5,

1911, a copy of which order will be found on Page 41 of said record, and that the same constitutes the record on appeal from the Order, Judgment and Decree of the District Court of the United States, for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit in said cause.

I further certify that I hereunto attach and herewith transmit the original Citation issued in this cause.

I further certify that the cost of preparing and certifying the foregoing transcript of the record on appeal is the sum of \$92.00 and that the said sum has been paid to me by Messrs. Hughes, McMicken, Dovell & Ramsey, of counsel for Petitioner and Appellant.

In testimony whereof I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 13th day of October, 1911.

(Seal)

A. W. ENGLE, Clerk.

